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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re JESSE M., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

ESPERANZA G.,

Defendant and Appellant.

A093497

(Alameda County
Super. Ct. No. J179227)

Esperanza G. (Grandmother), the grandmother and legal guardian of Jesse M., appeals from the order establishing jurisdiction over Jesse pursuant to Welfare and Institutions Code section 300, subdivision (b)¹ and removing him from Grandmother's home pursuant to section 361, subdivision (c). She contends that the amended petition fails to state facts sufficient to constitute a cause of action, that there was insufficient evidence in support of the jurisdictional finding and in support of the need for removal, and that the court abused its discretion by delegating the discretion to decide the frequency of visitation to the social worker. We uphold the lower court.

¹ All further unspecified code sections refer to the Welfare and Institutions Code.

BACKGROUND

In 1992 or 1995,² Grandmother obtained legal guardianship of Jesse, who was born in June of 1989. Jesse, his younger sister, and two of Grandmother's other grandchildren resided with her in a two bedroom apartment.

Jesse and his younger sister were taken into protective custody on April 27, 2000, and placed in an emergency foster home. Removal occurred after Grandmother attempted to remove Jesse from the home of his great-grandmother (Great-Grandmother).

The Agency filed a petition pursuant to section 300, subdivisions (b) and (g) on May 1, 2000. The petition alleged that Jesse "has suffered, or there is a substantial risk that [he] will suffer, serious physical harm or illness," "as a result of the willful or negligent failure of the child's parent or legal guardian to supervise or protect the child adequately from the conduct of the custodian with whom the child has been left." The petition asserted the following facts in support of the above allegation: "(a) That the grandmother, . . . is the legal guardian of the minor, and that the minor has been residing in the home of the maternal great-grandmother, . . . for the past two years and has been receiving financial assistance for the minor during this time. [¶] (b) That the grandmother, . . . , has been physically abusive toward the minor. [¶] * The minor, Jesse [], does not wish to reside with the maternal grandmother."

The petition further alleged that Christina M. (Mother), Jesse's mother, has a substance abuse problem interfering with her ability to care for and provide for him, and that both she and the father had failed to reunify with another sibling, who has been adopted. Additionally, the petition alleged that Grandmother had allowed Mother to reside in the home without disclosing this information to Agency.

Under subdivision (g), of section 300, the petition alleged that Jesse had been left without any provision for support. The whereabouts, circumstances, and ability of his father to provide for his support were unknown.

² Grandmother testified that she gained custody in 1992, but then she had to resubmit papers in 1995. The report by the social worker of the Alameda County Social Services Agency (Agency) indicates that Grandmother gained legal custody in 1995.

A detention hearing was set for May 2, 2000. The report of the Agency's social worker advised that Jesse and his sister stated that Mother, who has a long history of substance abuse, has been staying at Grandmother's home. Grandmother denied this, but stated that Mother comes over and stays only for a few days. Mother stated in open court that her address was Grandmother's. Both children also reported that both Grandmother and Great-Grandmother are physically and emotionally abusive towards them. Jesse stated that Grandmother has hit him with a belt and he has observed her hitting his sister with the belt. Jesse stated that he wanted to live with his Great-Grandmother. Great-Grandmother reported that Grandmother used to have an alcohol problem, but is now addicted to codeine and Vicadin. She also stated that Grandmother prevented Jesse from his treatment for attention deficit hyperactivity disorder by not allowing him to see his psychiatrist. The social worker recommended that Jesse's remaining in Grandmother's home would be contrary to his best interests.

The court held the detention hearing on May 2, 2000. Mother, Grandmother, and Great-Grandmother were present, but Grandmother did not have counsel. The court made interim findings that included the following: The Agency made a prima facie showing that good cause existed to believe the children should be detained in protective custody, and that there appears to be a substantial danger to the children's physical health pursuant to section 319, subdivision (a), to leave them in the home.

The detention hearing continued the following day, May 3, and the court confirmed the appointment of counsel for Grandmother. Mother submitted with regards to protective custody. Counsel for Grandmother stated that she submitted with respect to the detention hearing and waived the reading of the petition and formal advisement of rights. The court ruled that Agency had shown good cause to believe that there was a substantial danger to the physical health of the children, and there was no reasonable means to protect them without removing them from Grandmother's physical custody. The court authorized the social worker to detain Jesse (and his sister) in shelter care until the next hearing, and authorized her to release Jesse (and his sister) into suitable foster care.

Counsel for Grandmother told the court that she was concerned about any placement of Jesse with Great-Grandmother, because she believed that Great-Grandmother's grandson, a convicted child molester, was being released from jail in three days and would be returning to Great-Grandmother's home. Great-Grandmother told the court that he was not going to be in her home. The court stated that Jesse was not to be released to any relative's home until the completion of full home evaluations and criminal background checks. The court granted Great-Grandmother and Grandmother supervised visits with Jesse.

The matter came on for jurisdictional hearing on May 31, 2000. The original petition was amended to add the allegation that Jesse's mother and father had failed to reunify with another child, who had been adopted. The court released Jesse to the custody of Great-Grandmother, and ordered supervised visits between Jesse, Mother, and Grandmother. The court continued the jurisdictional hearing.

On June 8, 2000, Agency filed an amended petition. The amended petition provided, in pertinent part: "B-1 That on about April 27, 2000 the minor Jesse [] was taken into protective custody as a result of the maternal grandmother[']s, . . . failure to protect, to wit: [¶] A. the grandmother, . . . , has been the legal guardian of the minor since 1995 and that the minor, Jesse, has been residing in the home of the maternal great-grandmother, . . . , for much of the past four years while the grandmother was receiving payment for the minor's placement. [¶] B. the minor, Jesse [], does not wish to reside with the maternal grandmother, . . . , because he has witnessed his grandmother being emotionally abusive to his siblings and cousins who reside in the grandmother's home and has been emotionally abused himself, by the grandmother; [¶] B-2 That the mother, . . . , has a serious substance abuse problem which interferes with her ability to care and provide for the minor. [¶] B-3 That the mother, . . . and the father . . . , have failed to reunify with two siblings, . . . , and that [one of the minors] is permanently planned through Social Services and the [other] minor is adopted. [¶] B-4 That the grandmother has been physically abusive toward the minor in that the minor, Jesse [], reports that the abuse has included but is not limited to hitting the minor with a belt, kicking him in the stomach with her shoe on, and throwing hot water in his face.

[¶] B-5 On or about April 26, 2000, the grandmother has failed to protect the minor and left the minor without adult supervision in the care of teenage cousins who also reside in the home and the minor, Jesse [], was attacked outside their apartment by other boys who hit and kicked him.”

On June 13, 2000, the social worker for Agency filed a court report addendum recommending the termination of Grandmother’s legal guardianship and the placement of Jesse out of home with Great-Grandmother. The report noted that the court had released Jesse to Great-Grandmother on May 31 and that he was happy to return to her house. Jesse indicated that he did not want to live with Grandmother, but wanted to live with Great-Grandmother.

The court held the continued contested jurisdictional hearing on June 15 and 16. After Mother, Grandmother, and Great-Grandmother left the courtroom, Jesse, who was 11 years old at that time, testified that he had been living with Great-Grandmother for about nine years. Sometimes he would visit Grandmother for two or three days and she would yell at him, hit him with a belt—sometimes with the metal part of the belt—and kick him. He stated that Grandmother was angry with him “[m]ostly every time I’m there.” He stated that she hit him with a belt about a month before Agency removed him. He also recalled that about four months earlier she had thrown warm dishwater on him. He said that he got into a fight with some boys in the neighborhood when Grandmother was at work, and when Mother was at the house. He said that Great-Grandmother also used to yell at him and hit him with a belt, but now she does not. He said that now there are rules and she “grounds” him instead of hitting him.

Grandmother also testified and she denied using a belt to hit Jesse, kicking him, or throwing hot water on him. She admitted spanking him with her open hand and yelling at him. When asked whether she yelled at Jesse each time he visited, she responded: “It probably would seem that way to Jesse.”

At the close of the hearing the court requested the parties to submit briefs addressing the issues of whether Jesse fell within the provisions of section 300, subdivisions (b) and (c).

On September 6, 2000, the court refrained from announcing its decision because the parties stated that they had settled the matter. The counsel of all parties (Mother was not present, but her attorney was) agreed that Grandmother would relinquish guardianship and Great-Grandmother would be granted successor guardianship and the court would dismiss the dependency matter. The matter was continued to December 13 for the appointment of successor guardian.

By December 13, when the matter again came on for hearing, the settlement discussions had fallen apart. The addendum report filed on December 8, 2000, by the social worker for Agency recommended that Jesse remain in the home of his Great-Grandmother and that the petition for Jesse be found true and that services be provided to Great-Grandmother.

At the December 13 hearing, the court issued its decision and found the petition to be true with substantial modifications. The court provided the parties with typed copies of the amendments and then read the findings into the record. The court stated that it had “consulted some classic text on domestic violence” as well as conducting its own research in the law, and it found, in pertinent part: “Under 300-B of the Welfare and Institutions Code, that Jesse has suffered or there is a substantial risk that he will suffer serious physical harm or illness in that, B-1, that on or about April 27th, 2000, the minor, Jesse [], was taken into protective custody as a result of the maternal grandmother and legal guardian of the child, [Grandmother’s] failure to protect. [¶] To wit, A, although the maternal grandmother, . . . , has been the legal guardian of the minor since 1995, he has, nonetheless, resided in the home of his maternal great-grandmother, . . . , for the majority of his life, including from 1995 to the present. [¶] B, the minor, Jesse [], does not want to live with his legal guardian. . . , because she has been emotionally abusive to him and he has witnessed her being emotionally abusive to others including his great-grandmother Jesse states that his grandmother is—and I am quoting from the transcript—quote, ‘angry almost all the time,’ end quote. [¶] C, [Grandmother] uses her anger as a means to control others through belittling, critical, verbal abuse and presents a pattern of conduct of anger and volatility with the perceived threat of violence, which is consistent with accepted

clinical definitions of domestic violence. [¶] The Court, therefore, deems Jesse [] to have been a victim of domestic violence while in the care of [Grandmother]. The minor further states that [Grandmother] is physically abusive to his sister . . . and to his adolescent cousins who reside with her, and he is afraid she will be to him as well. [¶] B-2, that the mother, Christina [], has a serious and longstanding substance-abuse problem which interferes with her ability to care and provide for the minor. Nonetheless, [Grandmother] has left Jesse in [Mother's] care unsupervised from time to time.

“.....

“B-4, that [Grandmother] has been physically abusive to Jesse and that she kicked him in the stomach with her shoe on while angry and yelling, which made the minor the victim of domestic violence.

“B-5, that, as a result of having lived with his maternal great-grandmother, . . . , for the majority of his life, Jesse has formed a deep emotional and psychological bond to her and has clearly expressed his desire to remain in her care. Nonetheless, [Grandmother], without consideration for that attachment and regard for the detrimental impact her actions would have upon the minor, moved to abruptly remove him from [Great-Grandmother's] care; and as a result, Jesse has suffered emotional harm. . . .”

The court granted Great-Grandmother de facto parent status. The court proceeded to the dispositional hearing, and found clear and convincing evidence that Jesse must be removed from the physical custody of Grandmother. It also found that returning him home would cause a substantial danger to his physical health, safety, protection or well-being, and that there is no reasonable alternative means to protect him. The court approved Jesse's placement in the home of his Great-Grandmother. The court denied the parents reunification services and granted reunification services to Grandmother. The court also ruled that the social worker has discretion to determine whether Jesse should have unsupervised visits with his Grandmother either once or twice a month “depending upon what Jesse and his therapist are able to support.” The court ruled that the worker has discretion to increase the number of visits in consultation with Jesse's therapist.

Grandmother filed a timely notice of appeal.

DISCUSSION

I. *Adequacy of the Pleadings*

Grandmother contends that the amended petition failed to state causes of action to support jurisdiction under section 300, subdivision (b). She further argues that the petition failed to provide her with sufficient notice of the claims against her in violation of her due process rights (see *In re Fred J.* (1979) 89 Cal.App.3d 168, 175).

She acknowledges that she did not challenge any alleged pleading defects in the lower court, but cites *In re Alysha S.* (1996) 51 Cal.App.4th 393, 396-397 (*Alysha*), which held that pleading defects could be raised for the first time on appeal. The *Alysha* court cited Code of Civil Procedure section 480.80, subdivision (a) and civil cases to support its holding that the sufficiency of the pleadings may be raised for the first time on appeal. (*Alysha, supra*, at pp. 396-397.) However, two years later, the court in *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328 (*Shelley*) criticized the reasoning used in *Alysha*. The *Shelley* court pointed out that dependency proceedings are special proceedings governed by their own rules (§ 300 et seq.; Cal. Rules of Court, rule 1440 et seq.) and, unless otherwise specified, the Code of Civil Procedure does not apply. (*Shelley, supra*, at p. 328.) Concluding that no authority supports the application of Code of Civil Procedure section 430.80, subdivision (a) to dependency actions and referring to California Rules of Court, rule 39, which provides that rules governing criminal cases and appeals apply to juvenile proceedings unless otherwise specified, the court held that Penal Code section 1012 governs juvenile cases. (*Shelley, supra*, at p. 328.) Penal Code section 1012 provides that the failure to file a demurrer to defective pleadings waives the defect. (*Shelley, supra*, at p. 328.)

Grandmother attempts to distinguish *Shelley* from the case before us. She maintains that the parent in *Shelley* expressly waived her right to trial and waived a formal reading of the petition. Further, “the court affirmatively found that she understood the nature of the conduct alleged in the petition and the consequences of submitting the matter on the basis of the petition and social worker’s report.” (*Shelley, supra*, 68 Cal.App.4th at p. 328.) In

contrast, here, the matter was contested. Also, Grandmother is raising a due process claim, and the court in *Shelley* noted that the case before it was not a due process case. (*Ibid.*)

In this case, Grandmother, as the parent in *Shelley*, waived the reading of the petition and formal advisement of her rights. However, as Grandmother argues, the parent in *Shelley* did not raise a due process claim. Indeed, the *Shelley* court explained that the case before it “is not a due process case where [the parent] was denied constitutionally adequate notice of allegations which might result in the court asserting jurisdiction.” (*Shelley*, *supra*, 68 Cal.App.4th at p. 328.)

Accordingly, we conclude that, under the sound reasoning of *Shelley*, Grandmother cannot raise for the first time on appeal a challenge to any defects in the pleading on the grounds that the pleading failed to satisfy the statutory requirements. She can, however, raise a due process claim that the defects were so severe as to deny her due process notice.³ “Notice of the allegations upon which the deprivation of custody is predicated is fundamental to due process. [Citations.] Accordingly, a parent must be given notice of the specific factual allegations against him or her with sufficient particularity to permit him or her to properly meet the charge.” (*In re J. T.* (1974) 40 Cal.App.3d 633, 639.)

Grandmother complains that the allegations do not state a cause of action, the amended complaint was never put into the record, the amended petition was improperly labeled as the court’s findings and were handed to the parties at the time of decision, and amendments to the petition were phrased as findings. It is clear from the record that Grandmother received the amended complaint, and therefore we conclude that she clearly received notice. Moreover, we are not concerned whether incorrect labels were used as long as the pleading provided Grandmother with sufficient notice. Thus, we restrict our analysis to whether the amended pleading provided Grandmother with meaningful notice.

Our reading of the amended petition leads us to conclude that it provided meaningful notice to Grandmother. The amended petition may be defective, but it adequately

³ We note that Agency did not address the fact that the *Shelley* court left open the possibility that a due process claim may be raised for the first time on appeal and did not discuss whether the pleading violated Grandmother’s due process rights.

communicated to her Agency's concerns. Grandmother complains that the petition did not connect the Grandmother's acts to any resulting harm to Jesse. The amended petition stated that Jesse had suffered or there was a substantial risk that he would suffer serious physical harm or illness as a result of Grandmother's failure to supervise or protect him. It further alleged that Jesse did not wish to remain in Grandmother's home because he had witnessed her being emotionally abusive to his siblings and cousins. Additionally, it stated that Grandmother had hit Jesse with a belt, kicked him in the stomach while wearing her shoe, and thrown hot water in his face. It further specified that Mother, who had a substance abuse problem, was frequently in Grandmother's home. Moreover, Grandmother left him without supervision on April 26, 2000, when other boys attacked him by hitting and kicking him.

This petition may not have been pleaded well, but it certainly provided Grandmother with notice of the facts underlying the dependency petition. Indeed, other than complaining about the pleading's failure to specify how these facts are probative of current conditions,⁴ Grandmother cannot claim that she was surprised by any of the facts at issue at the hearing. Accordingly, we conclude that she was not deprived of due process notice.

II. Jurisdictional Findings

Grandmother contends that substantial evidence does not support the juvenile court's jurisdictional findings that Jesse is a person described under section 300, subdivision (b). Section 355 demands that jurisdictional findings must be supported with proof by a preponderance of evidence.

In reviewing the jurisdictional findings, we look to see if substantial evidence, contradicted or uncontradicted, supports them. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light

⁴ Grandmother cites *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, but this case did not involve a due process claim. In *Nicholas*, trial counsel had objected to the pleading on the basis that it failed to state a claim, and then raised this same issue on appeal. As discussed *ante*, trial counsel for Grandmother never made any such objection.

most favorable to the court's determinations; and we note that issues of fact and credibility are for the lower court's determination. (*Ibid.*)

Section 300 provides, in pertinent part: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child," "The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

The record contains ample evidence that Grandmother engaged in neglectful conduct. Jesse stated that his Grandmother was angry almost all of the time. He also testified that she hit him with a belt, kicked him in the stomach while wearing her shoe, and hit his cousins and his sister in front of him. Additionally, Grandmother had left him in the care of his cousins and Mother, who had a well-documented substance-abuse problem. Grandmother argues that she disputed the above evidence, but under the substantial evidence test we do not reweigh the evidence. The court found Jesse's testimony to be credible, and we will not second-guess this finding.

Grandmother also contends that there is no evidence that Jesse suffered any serious physical harm as a result of Grandmother's neglectful behavior and there is no evidence that Jesse is likely to suffer serious physical harm or injury. She claims that the court improperly relied on *In re Heather A.* (1996) 52 Cal.App.4th 183 (*Heather*).

In *Heather*, the court held that evidence supported the jurisdictional findings that the father's two daughters were minors described by section 300, subdivision (b). (*Heather, supra*, 52 Cal.App.4th at p. 194.) The children had witnessed the father's violent actions against the stepmother, prompting the court's ruling that the children were at risk because they could wander into the room while the two were fighting and accidentally be hit. (*Ibid.*) The court held: "It is clear to this court that domestic violence in the same household

where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*Ibid.*)

Grandmother argues that the violence in *Heather* was much more extreme than any of the acts alleged against her. The spousal abuse in *Heather* included acts of choking, pushing, and hitting the stepmother. (*Heather, supra*, 52 Cal.App.4th at p. 187.) Further, a psychological report indicated that the father in *Heather* had a long history of “disruptive emotional relationships with women” and a criminal record. (*Id.* at p. 191.) Moreover, the children were in physical danger because they could wander into the room where the physical confrontations were occurring. (*Id.* at p. 194.) In contrast, here, Grandmother asserts, the only evidence of violence was one instance of kicking Jesse, one incident of splashing warm dishwater on him, one incident of her hitting Jesse with a belt, and one instance of Jesse being involved in a fight with other children outside his home while Grandmother was at work. There is no evidence, she argues, that Jesse suffered any serious physical injury from any of these incidents. Further, she cites *In re Jennifer P.* (1985) 174 Cal.App.3d 322, 326, which provides: “An act or acts of abuse do not in themselves provide a basis for juvenile court jurisdiction. There must be some reason to believe the acts may continue in the future.”

Agency’s appellate brief never specifically addresses this argument, but simply concludes, without citing any specific evidence, that substantial evidence supported the court’s finding. We agree; our independent review of the record reveals little support for Grandmother’s argument.

Simply because the violence was more extreme and, perhaps, the danger posed to the children was greater in *Heather*, does not mean that Jesse was not at risk. The acts of violence were not as isolated as Grandmother depicts them. Jesse testified that his Grandmother hit him with a belt. He recalled a specific time she hit him about a month before he was removed from the home, but he indicated that he had also been hit other times. Moreover, he testified that “like, always, like, has her—like a belt in her hand. And she says, like, you got, like, five—you have five seconds to get out [of his cousin’s room].

And if you don't like—if you don't get out, then you get hit.” Jesse testified that his Grandmother often hit him on his legs, which hurt, because he has arthritis in his legs. Further, he witnessed his Grandmother attempting to hit one of his cousins with a metal bar when she accidentally hit the other cousin with the bar. Jesse also testified that his Grandmother was angry almost all of the time. We therefore conclude that Grandmother's temper and tendency to use violence constitutes neglect. This neglect poses a potential risk of physical injury to Jesse as evidenced by the incident where she accidentally hit one cousin with a metal bar when intending to hit the other cousin. Jesse, not only was the victim of her violent episodes, but he was in danger of being accidentally injured while witnessing her hitting his sister and cousins. Grandmother denied the seriousness of her anger and temper, and therefore the court had sufficient reason to believe that these acts of violence would continue in the future. Continuing to live in such an environment would pose a future risk of physical and emotional injury to Jesse.

III. Dispositional Findings

Grandmother also contends that substantial evidence did not support Jesse's removal. Section 361, subdivision (c) provides in relevant part: “No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following: [¶] (1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. . . .”

Grandmother asserts that the record does not contain evidence that removal was necessary and there is no evidence that the court considered less drastic alternatives to removal.⁵ As discussed *ante*, the evidence shows that Grandmother is angry almost all of

⁵ Grandmother also objects to the fact that she had not been offered reunification services. She concedes that she waived irregularities as to the timeliness of the reunification services. She is now being offered reunification services. She has not made

the time and is prone to use violence as a method of discipline. There was no reasonable alternative because Grandmother denied engaging in such behavior and Jesse stated clearly that he wanted to live with his Great-Grandmother. Accordingly, substantial evidence supported the court's decision to remove Jesse.

IV. Visitation

The court provided the social worker with the discretion to determine whether visitation should occur either twice or once a month, depending upon what Jesse and his therapist advised. Also, the social worker had discretion, in consultation with Jesse's therapist, to increase the visits to more than twice a month. Grandmother maintains that the court abused its discretion in delegating its judicial power to the social worker.

It is clearly an abuse of discretion and a violation of the separation of powers doctrine if the court delegates the discretion to determine whether any visitation will occur. (See, e.g., *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1009; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757-758.) The court in *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1475 reversed an order that a father has "no visitation rights without permission of minors' therapists." The court held that the order improperly conditioned "visitation on the children's therapists' sole discretion." (*Id.* at p. 1477.)

The case before us, however, does not involve the court's delegation of all control over visitation to the social worker. Rather, the court ordered visitation once or twice a month, and the social worker had the discretion, considering the input from Jesse and his therapist, to increase the number of visits.

In *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1233, the court considered an order that provided the following: "Visitation will be at [the Los Angeles County Department of Children's Services' (Department)] discretion and the children's discretion." The court concluded, for the following reasons, that the court had not improperly delegated its judicial power: "First, there is no delegation of judicial power to

any argument that any specific reunification service would have prevented the need for Jesse to be removed. Indeed, it would be difficult for her to make such an argument since at the hearing she denied ever hitting Jesse with a belt or ever kicking him.

the children even though the order states in part that visitation is at the discretion of the minors. In the context of this case, this means the children should not be forced to visit with their mother against their will and in no way suggests that the minors are authorized to do more than express their desires in this regard. Second, the order simply authorizes the Department to administer the details of visitation, as specified by the court. Although the order grants the Department some discretion to determine whether a specific proposed visit would be in the best interests of the child, the dominant factor in the exercise of that discretion is the desire of the child to visit the mother.” (*Id.* at p. 1237.) The court noted that the “nature of the task of the juvenile court system in responding to the rapidly changing and complex family situations which arise in dependency proceedings and the interests of judicial economy require the delegation of some quasi-adjudicatory powers to a member of the executive branch dedicated to the dependent child’s welfare. As long as that role is limited and subject to supervision, as it was here, there is no violation of the separation of powers doctrine.” (*Ibid.*)

“In a dependency proceeding, the juvenile court has the power and responsibility to define [the right to visit with the child] after the minor has been adjudged a dependent child of the court and has been removed from parental custody. [Citations.] This does not mean the juvenile court must specify all the details of visitation.” (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373-1374, fn. omitted (*Moriah*)). The court in *Moriah* discussed whether the court has to specify the frequency of visitation or whether it can delegate this decision. It pointed out that the court in *In re Jennifer G.*, *supra*, 221 Cal.App.3d at pages 757-758 held there was an abuse of discretion because the lower court had delegated the decision whether there would be any visitation. The *Jennifer* court in dictum also criticized the visitation order for failing to determine “the frequency and length of visitation.” (*Id.* at p. 757.) The *Moriah* court disagreed with this dictum and pointed out that it conflicted with the holding in *In re Danielle W.* The *Moriah* court explained: “Moreover, in our view, the *Jennifer G.* dictum is at odds with the purposes and practical necessities of a visitation order intended to protect the well-being of a dependent child while both maintaining ties between the child and parent or guardian and providing the parent or

guardian with an opportunity to demonstrate why his or her right to custody and care of the child should be reestablished.” (*Moriah, supra*, at p. 1375.)

The *Moriah* court further explained: “Requiring a disposition order to specify frequency and length of visitation compromises the ability of the county agency to fulfill its statutory mandate to supervise each case in a manner consistent with the child’s best interests. Visitation arrangements demand flexibility to maintain and improve the ties between a parent or guardian and child while, at the same time, protect the child’s well-being. Moreover, compelling a juvenile court judicial officer to specify such detail in a visitation order creates the risk that the order actually may work to the detriment of the child whom the court must protect, and even to the disadvantage of the parent or guardian who is making progress toward eliminating the conditions which required juvenile court intervention. A juvenile court cannot be expected to anticipate and promptly respond to changing dynamics of the relationship between parent or guardian and child, which changes may dictate immediate increases or decreases in visitation or demand variations in the time, place and length of particular visits. Juvenile court judicial officers simply do not have the time and resources to constantly fine tune an order in response to the progress or lack thereof in the visitation arrangement, or in reaction to physical or psychological conduct which may threaten the child’s well-being. Thus, parties in a dependency proceeding should not be locked into a visitation order which specifies a rigid schedule and length of visits. Such an order is not in the best interests of either the child or the parent or guardian because it fails to allow the flexibility necessary to rapidly accommodate the evolving needs of the dependent child and his or her parent or guardian.” (*Moriah, supra*, 23 Cal.App.4th at p. 1376.)

We agree with the *Moriah* court that the frequency of visits is simply an aspect of the time, place, and manner of visitation. Accordingly, the court did not abuse its discretion in granting Agency discretion to determine the frequency of visitation while providing it with the guidelines to consider both Jesse and his therapist’s opinions.

DISPOSITION

The judgment is affirmed.

Lambden, J.

We concur:

Kline, P. J.

Haerle, J.